REMARKS

Claims 1-12 are pending in the present application. Claim 13 was previously canceled.

Unity of Invention

Claims 1-12 are pending and are subject to a Unity of Invention restriction under 35 U.S.C. §§ 121 and 372 for reciting inventions or groups of inventions that are not so linked as to form a single general inventive concept under PCT Rule 13.1. (*See*, Office Communication, at page 2). Applicant respectfully traverses.

For the purpose of examination of the present application, Applicant elects, with traverse, Group I, claims 1-9.

According to MPEP § 803, if the search and examination of an entire application can be made without a serious burden, the Examiner *must* examine it on the merits, even though it includes claims to independent or distinct inventions. Since Group I (claims 1-9, directed to monoamine neurotransmitter reuptake inhibitor chemical compounds) and Group II (claims 10-12, which are methods involving monoamine reuptake inhibitor chemical compounds), by searching one group the Examiner is necessarily searching the other group since the claims are so closely related in subject matter.

The Applicants respectfully disagree with the Examiner's interpretation of the unity of invention. According to MPEP § 1850, Determination of "Unity of Invention, " with respect to a group of inventions claimed in an international application, unity of invention exists only when there is a technical relationship among the claimed inventions involving one or more of the same or corresponding special technical features. Unity of invention has to be considered in the first

place only in relation to the independent claims in an international application and not the dependent claims.

Independent claim 1 involves a piperidine derivative chemical compound which is useful as a monoamine neurotransmitter reuptake inhibitor. The claims that are being restricted from Group I are all dependent upon claim 1 of Group I and are methods that involve the piperidine derivative of claim 1.

Also according to MPEP § 1850, although lack of unity of invention should certainly be raised in clear cases, it should neither be raised nor maintained on the basis of a narrow, literal or academic approach. There should be a broad, practical consideration of the degree of interdependence of the alternatives presented.

Therefore, in light of the above arguments, there is unity of invention within the claims since they are based upon piperidine derivative chemical compounds, their method of use in the subsequent treatment of diseases which involve monoamine neurotransmitter reuptake inhibitors, as well as their method of manufacture as a pharmaceutical composition in treatment of diseases involving monoamine neurotransmitter reuptake inhibitors. Since there is this interrelationship within the claims, it would not be undue burden to search all of claims 1-12.

As such, Applicants respectfully request that the Examiner rejoins Groups I-II.

Reconsideration and withdrawal of the Unity of Invention Restriction Requirement of claims 1-12 are respectfully requested.

Elections

The Examiner has required a further election to a single species to which the claims shall be restricted to if no generic claim is finally held to be allowable.

For the purpose of examination of the present application, Applicant elects, with traverse, compound (29) of Example 5, (-)-cis-3-methoxymethyl-4-(3,4-dichlorophenyl)-piperidine.

The Applicant believes that claims 1 to 9 read upon the above elections.

The Examiner is additionally reminded that because the present Restriction is between a product (Claims 1-9) and its process of use (Claims 10-12), where Applicant elects claims directed to the product, and a product is subsequently found allowable, withdrawn process claims that depend from or otherwise include all the limitations of the allowable product claims will be rejoined in accordance with the provisions of M.P.E.P. § 821.04. Such process claims that depend from or otherwise include all the limitations of the patentable product are entered as a matter of right if the amendment is presented prior to final rejection or allowance, whichever is earlier. Furthermore, in the event of rejoinder, Applicant understands that the requirement for restriction between the product claims and the rejoined process claims will be withdrawn, and the rejoined process claims must be fully examined for patentability according to the provisions of 37 C.F.R. § 1.104.

Reconsideration is respectfully requested.

Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact Paul D. Pyla, Registration No. 59,228, at the telephone number of the undersigned below, to conduct an interview in an effort to expedite prosecution in connection with the present application.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to our Deposit Account No. 02-2448 for any additional fees required under 37 C.F.R. § 1.16 or under § 1.17; particularly, extension of time fees.

Dated: January 7, 2008

Respectfully submitted,

By /Gerald M. Murphy, Jr./
Gerald M. Murphy, Jr.
Registration No.: 28,977
BIRCH, STEWART, KOLASCH & BIRCH, LLP
8110 Gatehouse Road
Suite 100 East
P.O. Box 747
Falls Church, Virginia 22040-0747
(703) 205-8000
Attorney for Applicant